

REMARKS

I. Claim Rejections Under 35 U.S.C. § 102

The Examiner rejected claims 1-4, 6-10, and 12-14 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,502,232 to Broders (“Broders”). The Examiner contends that Broders teaches an apparatus comprising a body having at least one first non-linear edge, which is adapted to be used to make a portion of an associated fabric pattern, wherein the fabric portion has an edge such that the shape of the fabric portion has an edge such that the shape of the fabric portion edge resembles the first non-linear edge. The Examiner further states that Broders teaches a body having a second non-linear edge, which is adapted to be used to make a portion of the fabric pattern, wherein the shape of the fabric portion edge resembles the second non-linear edge. The Examiner further states that Broders teaches that the shape of the first non-linear edge is different from the shape of the second non-linear edge. Broders’ non-linear edges are in a wavy pattern. The Examiner further states that Broders teaches the method as recited in original claim 12. Applicant respectfully traverses these rejections.

In order for a rejection under 35 U.S.C. § 102(b) to be proper, all claim limitations must be present. Applicant respectfully contends that amended claims 1, 12, 18, and new claim 19 all recite elements which are not taught or suggested by Broders. Claim 1 has been amended to state that the first non-linear edge has “a first wavelength, a second non-linear edge having a second wavelength, said first wavelength being different from said second wavelength.” Amended claim 1 also states “wherein said first non-linear edge is adapted to be used to make associated fabric blocks for the fabric pattern, said shape of the fabric portion edge resembling said first non-linear edge is adapted to be visible in the fabric block.” These amendments find support in the subject specification on page 8, lines 3-21. The paragraph on page 10, lines 1-14 has been amended to contain the limitation that the seams of the fabric edges are visible. The visibility of the seam between fabric edges also finds support in Figure 2.

Broders teaches a wave form carpet layer’s template used for cutting the edges of pieces of carpeting and matching wave form patterns preliminarily to sewing the side edges together in a substantially invisible seam. See Abstract. Broders recognizes a problem when cutting carpet

segments that if straight lines are cut, the resulting seam is quite evident. However, it is substantially invisible to the casual observer if the pieces are cut with matching wavy side edges and then sewn together. See Broders, column 1, lines 11-15. This is the complete opposite goal of the present invention. The object of the present invention is to have the seams visible so that different colors and wave form pattern can be seen. This provides unique looks to quilts or other fabric items, such as vests or placemats.

Another difference between the present invention and Broders is that the first non-linear edge of the present invention has a first wavelength, and the second non-linear edge of the present invention has a second wavelength. This enables different wave patterns to be used on different projects. However, only one edge should be used per project to ensure that the valleys and troughs between two pieces of fabric consistently mate. This is radically different than Broders. Broders states “the inner and outer side edges of both legs of the template have a uniform wave-form contour.” See column 1, lines 44-46. Further, Broders states that “the crests 34 of the wave-form contour of the inner side edges of both legs are opposite the valleys 36 of the wave-form contour of the outer side edges of both legs.” See column 2, lines 24-26. The present invention does not have such a configuration. The first non-linear edge has a first wavelength and the second non-linear edge has a second wavelength. The trough of the second wavelength would never fit into the valley of a first wavelength. Not only is this different from Broders, but Broders requires that the wavelengths of the first and second edges be identical in order to properly use the Broders’ template.

Claims 12 and 18 now include the step of forming a visible seam between the non-linear edges. Further, amended claims 12 and 18 require that only the first non-linear edge be used to make the fabric block. As previously discussed, Broders does not teach these limitations. In fact, the method of using Broders is much different than that of the present invention. In order to effectuate an invisible seam in carpeting, two templates are required, not just one. The first template only has wavy contours on one side and the second side is linear. See Broders, Figure 6. Next, the device disclosed in Broders is used to cut edges of smaller pieces of fabric. During this step, both the inside and outside edges are used to ensure the crests and valleys of the carpet pieces mate. See Broders, Column 3, Lines 6-24. Based upon the foregoing, Applicant

respectfully contends that Broders cannot be used alone or in combination to reject claims 12 and 18 of the instant application.

As previously mentioned, new claim 19 requires that only one non-linear edge be used at a time to form a fabric block. This is required so that the valleys and troughs match in forming the fabric block. However, this is different than Broders. Broders requires, as stated in column 3, lines 14-24, in using the Broders' template, two cuts are made along the outside edge of the template. Then the template is rotated 180 degrees and the inside edge of the template is used to cut the opposite edge piece. As such, during use of the Broders' template in carpet laying, both sides of the template are used during the process in order to have the valleys and troughs match. As such, the limitation of claim 19 not only is absent from the Broders reference, Broders teaches away from the present invention.

Based upon the foregoing, Applicant respectfully contends that not only are the limitations now found in amended claims 1, 12, 18, and 19 not taught in the Broders patent, they are not even suggested. Broders teaches away from these limitations.

Claims 2-4, 6-10, 13, and 14 are directly or indirectly dependent upon claims 1 and 12, which are now believed to be allowable. As such, the arguments for claims 1 and 12 are equally applicable here and are incorporated herein by reference.

Applicant respectfully requests that the claims are in condition for allowance and that the rejection under 35 U.S.C. § 102(b) be withdrawn.

II. Claim Rejections Under 35 U.S.C. § 103

The Examiner rejected claims 5, 11, and 15-18 under 35 U.S.C. §103(a) as being unpatentable over Broders in view of U.S. Patent No. 5,557,996 to Reber et al ("Reber"). The Examiner states that Broders allegedly teaches all aspects of the claimed invention and method except for demarcations for measuring lengths. Because Reber teaches these demarcations for measuring lengths, the Examiner concludes that it would have been obvious to combine Broders in view of Reber to arrive at the present invention. The Examiner also states that Reber teaches an apparatus and method for making a fabric pattern for carpets and quilts. Applicant

respectfully traverses this rejection. Applicant respectfully contends that for the reasons mentioned above, Broders teaches away from the present invention as currently claimed.

A. Prima facie case of obviousness not established--Through the decisions of the CCPA and the Court of Appeals for the Federal Circuit, certain well-established principles of claim construction and review have been developed. If these principles are not met, a prima facie case of obviousness under 35 U.S.C. § 103 has not been established and the claim in issue should be allowed. The undersigned respectfully suggests that these tests are not met by the prior art in this case and a prima facie case of obviousness has not been established. These tests will be briefly applied to the individual claims rejected by the proposed combination.

B. All claim limitations must be considered--35 U.S.C. § 103 requires that the subject matter as a whole be reviewed. There are certain limitations of claims 1, 12, 18 and 19 which are still not shown in the combination proposed by the Examiner. For example, the amended claims require that the pattern profile measuring device have two non-linear edges, each having a different wavelength. The wavelengths of the non-linear edges of the device in Broders are equal, and in fact, required in order for the Broders device to work. Second, the seams of the present invention are visible, rather than invisible as in Broders. Finally, with respect to claims 12, 18 and 19 of the present invention, only one non-linear edge should be utilized per project. Again, this is not taught in Broders. According to 35 U.S.C. § 103, all these limitations must be considered and given proper weight if the correct result is to be reached.

C. Prior art does not teach the source of the problem--The Office Action takes the position that Broders teaches the present invention. However, Broders recognizes the problem of having visible carpet seams when straight cuts are utilized during installation. To rectify the problem, it uses a wavy profile. Visible seams are not the problem being solved by the present invention. In fact, it is desirable to see the seams between fabric pieces. It is the wavy contour that gives each fabric block its unique appearance. The prior art clearly does not teach the source of the problem and therefore could not be said to teach its solution.

D. Broders teaches away from the present invention. Because Broders requires that the resulting seams of the carpet be invisible, that the template have the same shaped outside and inside edges, and that both sides be used during carpet installation, Broders actually teaches away from the invention recited in claims 1, 12, 18 and 19.

CONCLUSION

In response to the Office Action dated August 5, 2004, claims 2 and 8 were canceled, and claim 19 was added. Claims 1, 3, 4, 7, 9, 12, and 18 have been amended pursuant to 37 C.F.R. 1.121. It is believed these amendments have placed the amended claims in conformance with the requirements of the Office Action. At this point, applicant believes that the claims remaining in the case distinguish over the art cited and comply with the requirements of 35 U.S.C. §102, §103, and §112. As such, allowance of the claims is respectfully requested.

Respectfully submitted,

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